

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

RONALD E. HARRIS, II,

Petitioner,

-vs-

WARDEN, Chillicothe Correctional
Institution,

Respondent.

:

Case No. 3:12-cv-410

:

District Judge Walter Herbert Rice
Magistrate Judge Michael R. Merz

**REPORT AND RECOMMENDATIONS ON MOTION FOR LEAVE
TO APPEAL IN FORMA PAUPERIS AND CERTIFICATE OF
APPEALABILITY**

This habeas corpus case is before the Court on Petitioner's Motion for Leave to Appeal *in forma pauperis* (Doc. No. 11). Since this is a habeas corpus case, Petitioner also cannot appeal without a certificate of appealability. The Court considers both issues together in this Report. Because judgment has already entered in the case, the Motion is deemed referred under 28 U.S.C. § 636(b) requiring a report and recommendations rather than a decision from a referral Magistrate Judge.

Petitioner paid the \$5.00 filing fee for the initial filing in this case (Doc. No. 2). However, Petitioner is incarcerated, there are substantially more costs associated with appeal

than with filing in the District Court, and his Motion shows he is unable to pay those additional costs. From a financial aspect, Petitioner is indigent.

However, a matter may not proceed *in forma pauperis* on appeal if the District Court certifies that the appeal is not taken in objective good faith. In this case the Magistrate Judge recommended and Judge Rice decided over Petitioner's Objections that his Petition was second or successive and could not proceed without prior permission of the Sixth Circuit. That status of the matter was so clear on the face of the record that the Magistrate Judge recommended, and Judge Rice entered, dismissal upon initial review under Rule 4 of the Rules Governing § 2254 Cases (Doc. Nos. 4, 9). In his Motion Petitioner has offered no reason why that decision was incorrect. Therefore, it is respectfully recommended that this Court certify to the Sixth Circuit that the appeal is not taken in objective good faith and should not be permitted to proceed *in forma pauperis*.

In addition, reasonable jurists would not disagree with this Court's conclusion that the Petition is second or successive and requires circuit court permission before this Court has jurisdiction to consider it. Therefore Petitioner should be denied a certificate of appealability.

May 29, 2013.

s/ ***Michael R. Merz***
United States Magistrate Judge

NOTICE REGARDING OBJECTIONS

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to the proposed findings and recommendations within fourteen days after being served with this Report and Recommendations. Pursuant to Fed. R. Civ. P. 6(d), this period is extended to seventeen days because this Report is being served by one of the methods of service listed in Fed. R. Civ. P. 5(b)(2)(C), (D), (E), or (F). Such objections shall specify the portions of the Report objected to and shall be accompanied by a memorandum of law in support of the objections. If the Report and Recommendations are based in whole or in part upon matters occurring of record at an oral hearing, the objecting party shall promptly arrange for the transcription of the record, or such portions of it as all parties may agree upon or the Magistrate Judge deems sufficient, unless the assigned District Judge otherwise directs. A party may respond to another party's objections within fourteen days after being served with a copy thereof. Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See United States v. Walters*, 638 F.2d 947 (6th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140 (1985).